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International Court of Justice

Fila

Final pleadings

for the former Reich Foreign Minister

Joachim von Ribbentrop

before

the International Military Tribunal at Nuremberg

by

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Attorney at law

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Introduction

"All great repercussions of history of the world and especially in modern Europe have at the same time been wars and revolutions." x)

We are standing in the midst of such a repercussion. It absolutely is not concluded as yet. To select single events in order to render judicial judgment is not only almost impossible, but entails the danger of too early a verdict. Make no mistake about it:
here we do not judge a local crisis whose causes are limited to a certain part of Europe. We have to form a judgment about a catastrophe which touches the deepest roots of our civilisation.

The prosecution has laid down strict measures in judging certain national and international events. Germany is much interested in the development of the idea of the law if its use leads to a betterment of international morals. This court has the high task, not only to decide about certain defendants and uncover the causes of the present catastrophe, but at the same time it will create norms which are expected to be adopted universally.

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x) Halévy

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No law should be created that is only applied to the weak. Otherwise we should risk the danger that again all political efforts are directed toward ability for total resistance and thereby make war still more pitiless than the one about which judgment is to be rendered here.

In reference to these basic thoughts I beg to present to the Tribunal the case which I represent.

H. von Ribbentrop is being considered among the conspirators as the man mainly responsible for the foreign policy and diplomatic side of an alleged conspiracy, which is supposed to have had as its goal the preparation and execution of aggressive wars. It is my task to find out from the evidence when an attack in the meaning of international law is prevalent, and in which cases aggressive wars were conducted.

The term aggression follows not only the proposed formal judicial definition by the American and British prosecutors, but has, beyond all a basis in realities.

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Only the knowledge of these premises permits the adoption of an attitude which will serve as a basis for the decision of the court. I am therefore deferring the discussion of the problematic aspects of aggression and aggressive wars till I have presented to the court the evidence for the valuation of German foreign policy and the participation in it by H. von Ribbentrop.

As the Tribunal intends to consider the matter in the light of criminal law, I shall examine especially, to what extent H. von Ribbentrop checked or promoted the decisions concerning foreign policy during the time of his political activity.

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I.

The Foreign Policy of Ribbentrop as Ambassador and Foreign Minister.

1935 - 1938. Mr. von Ribbentrop's first step into the world of the balancing of interests and therefore of the international game of power was successfully taken when he in 1935 concluded the naval agreement between Germany and England. The circumstances under which this treaty came to life are as significant for the political problems of those years as they are characteristic for judging the personality von Ribbentrops and his further political development. This treaty - as it is known in informed quarters - came about under exclusion of the official German diplomacy. The then German Ambassador in London, von Hoesch, and the Wilhelmstrasse were very sceptical toward this project. Both Hoesch and the Wilhelmstrasse did not believe that England was inclined to concluding such a treaty, which contradicted the terms of part V of the Versailles Treaty as well as her previous attitude displayed at the different disarmament conferences. Furthermore they did not believe that such an agreement could materialize a few weeks after the Council of the League of Nations had declared the

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restoration of German military sovereignty as a breach of German obligations, and England, France and Italy had met at Stresa in order to counteract this German step. They did by no means believe that a successful conclusion of such a far reaching treaty with its fundamental significance could be achieved by an outsider like Mr. von Ribbentrop.

The consequences of concluding this treaty were just as significant as far reaching. The authority of Mr. von Ribbentrop who came from the party rose in Hitlers eyes. However, the relationship between Mr. von Ribbentrop and the conservative diplomatic corps became more and more difficult. This acting ambassador (Titularbotschafter) who had managed to acquire Hitler's confidence was distrusted because his activity could not be controlled by the Foreign Office.

From the conclusion of the naval agreement on, Hitler began to see in Mr. von Ribbentrop the man who could help him in the fulfilment of his pet wish - and, we may say, of that of the German people - to bring about a general political alliance with England. The tendency to realizing these intentions originated in real as well as ideal motives.

The real motive can be condensed into short consideration, that it is the bad luck of our nation and of all of Europe that Germany and England were never able to understand each other, in spite of serious attempts of both countries during the last 50 years.

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The ideal motives rested in Hitler's undisputable preference for many approved internal institutions of the empire.

Politically the naval agreement represented the first important break with the Versailles policy which was sanctioned by England with the final approval by France. And thus the first practically useful armament limitations were accomplished after many years of fruitless negotiations.

With all these factors a generally favourable political atmosphere was created at the same time. The naval agreement and its effects may also have been the reason for Hitler to appoint Herr von Ribbentrop Ambassador to the court of St. James the following year, after the death of Hoesch.

As surprisingly fast as Herr von Ribbentrop succeeded in closing the naval agreement, as little success had he in offering a general alliance to England. Was it the faul of Herr von Ribbentrop's diplomacy or the basic difference of interests?

He who knows the angelsaxon psychology knows that it is not advisable to attack these people at once with proposals and requests. If at the first moment one may especially from the German side recognize many mutual characteristics in the British, still on close contact on will note profound differences. Both root in a different soil. Their spiritual field is watered by various streams.

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The deeper the Germans and the British go, the greater will be the proof of the difference of their faith and their intellect. The deeper the British and the French penetrate into the nature of the other, the more mutual features they will find. Common political interests in the past 50 years have deepened these mutual features between the British and the French.

In the course of modern history England always had the need for an alliance with a continental military power and searched and found satisfaction of this interest, according to the standpoint of British aims, sometimes in Vienna sometimes in Berlin and from the beginning of th 20th century in Paris.

Even at the time of Herr von Ribbentrop's activity as an ambassador, England's interest did not require a deviation from this line. To this was added the principal British attitude that Great Britain did not wish to commi herself on the continent. One was able to recognize from the Thames the complications slumbering under the surface of the continent. Added to this was the fact that authoritative men in the Foreign Office thought still too much in the political terms of the end of the 19th and beginning of the 20th century and this attitude was still, now as then, governed by leaning towards France.

The voices of those who supported a closer approach toward Germany were negligible, their political power inferior to that of the opposition. To this were added the difficulties which resulted for Herr von Ribbentrop

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from Germany's participation in the non-interference committee, which at that time met in London in order to keep the powers out of the Spanish civil war.

The prosecution raised the question of how Herr von Ribbentrop regarded the German-British attitude on his departure as an Ambassador from London. The answer to this will best be furnished by document TC 75, which contains the view of Herr von Ribbentrop about the then prevailing situation of Germany with regard to foreign politics and the future possibility for shaping German-British relations.

Herr von Ribbentrop presupposes that Germany does not plan to be bound by the status-quo in Central Europe. He entertains the conviction that the implementation of these objectives of foreign politics will by force lead Germany and England "into different camps".

For this case he advises to strive toward a constellation of alliances, loose though at first, with powers of equal interests (Italy and Japan). Through this policy he hopes to bind England at the danger points of her Empire, still to keep open the possibility of a understanding with Germany.

Herr von Ribbentrop then turns to the question of Austria and the Sudetenland. According to his conviction then prevailing, England will not in both these questions give her consent to a modification of the status-quo but might be forced through the power of circumstances

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to tolerate a solution of these questions.

In view of vital French interests a change of the status-quo in the East will, however, cause England always to become an opponent of Germany in arguments of such nature. Herr von Ribbentrop upheld this interpretation not only in 1938 when this document was penned, but contrary to the assertions of the prosecution warned Hitler of this danger even before and at the outbreak of the second World War.

From this document follows also that Herr von Ribbentrop did not, as was asserted here represent the British toward Hitler as a degenerate nation but he says in this document quite clearly that England would be a hard and keen opponent to the pursuance of German interests in central Europe.

These interpretations of Germany's attitude in foreign politics at that time, as expressed in TC 75, evidently agreed with Hitler's idea inasmuch as in the course of the Fritsch crisis Herr von Ribbentrop took over the foreign ministry in place of the resigning Herr von Neurath.

According to Herr von Ribbentrop's statements Hitler asked him upon entering upon his office, to assist him in solving 4 problems. These consisted in the Austrian, the Sudeten German, the Memel as well as in

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the Danzig and Corridor question. As shown by the evidence this was not a secretive understanding which was arrived at by the two statesmen.

The Party program contains, in point 3, the demand for revision of the peace treaties of 1919. In a number of speeches Hitler repeatedly pointed to the necessity of fulfilling these German demands. Reich Marshal Goering testified here that, in November 1937, he explained to Lord Halifax the necessity of solving these questions and said that they are an integral part of German foreign politics. These goals he also presented openly to the French Minister Bonnet. Herr von Ribbentrop therefore gave his principle support to goals, which were known, and which resulted, of necessity from the dynamics, at that time prevailing in central Europe on account of the recuperation of the Reich.

How far the freedom or restriction of action of Herr von Ribbentrop as a Minister reached in the solution of these questions, I shall explain in connection with my remarks on the participation in the conspiracy of which the defendant is accused . Only that much may be said here, that as was proven by evidence, with the dismissal of Freiherr von Neurath the concentration in Hitler's hands of the decisive authority also in the field of foreign politics had found its conclusion. Herr von Neurath was the last Foreign Minister who, at first as a Foreign Minister had managed to maintain a decisive influence on foreign politics under the regime of National Socialism,

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which in time with the increasing power of the regime he had to surrender to Hitler's striving totality, more and more.

In Herr von Ribbentrop a man now became Foreign Minister whom Hitler had selected after his own taste.

Besides of all forms of state law and jurisdiction, government without a doubt has a strong component in the purely personal relations among the rulers. Seen from this point of view it is necessary for the understanding of certain actions and history to look into the relations between Hitler and Herr von Ribbentrop.

Herr von Ribbentrop as a well to-do man from the nationalistic camp saw in Hitler and in his party efforts which corresponded with his own ideas and feelings. Herr von Ribbentrop's ideas about the foreign countries visited by him aroused Hitlers interest. Hitler's personality and political convictions formed in Herr von Ribbentrop a form of loyality, the final explanation of which one can perhaps find in the effects of the power of suggestion and hypnosis.

We do not wish to conceal that not only Herr von Ribbentrop but also an enormous number of people on this side as well as on the other side of the border fell victim to this power.

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What is in this court-room to be conceived in the forms of law, will find its final explanation only from the point of view of the effect on the masses and in the psychology, to say nothing of the pathological form of these phenomena. This task may be left to the sciences concerned.

As an attorney - and only as such do I have to evaluate the results of the evidence - I may, with the permission of the tribunal, present, after clarifying these facts, the role of Herr von Ribbentrop within the alleged conspiracy for the plotting of wars and acts of aggression under breach of contracts.

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Ribbentrop's part in the annexation of Austria

Herr von Ribbentrop had not yet been Foreign Minister for 10 days when he was called upon by Hitler to participate in the conference with the Austrian Bundeskanzler and his Foreign Minister on 12 and 13 February 1938 in Berchtesgaden. Evidence presented in court has confirmed the fact, that questions especially involving Austria were exclusively within the domain of Hitler. The then Ambassador von Papen reported directly to the Head of the State. Herr v. Ribbentrop had no influence whatever upon activities of the party in Austria as well as in the southeastern territory. My client alleges to have been informed only rarely and not officially about its activities there.

The former Austrian Foreign Minister Dr. Guido Schmitt deposed that Herr v. Ribbentrop did not participate in the decisive conference between Hitler and Schuschnigg. During the rest of the conference he did not conduct himself in the Hitlerian style and created the impression of not being informed on the subject, which was probably due to his late activity in London and his being appointed Foreign Minister only recently. From this unobjectionable conduct of v. Ribbentrop the prosecution deducted that Hitler and Ribbentrop had agreed upon a premeditated manoevre . It sees in H.v. Ribbentrop's conduct that, which is

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typically characterised as "double talk". Must not the undisputable data and facts as regards H.V. Ribbentrop, the impression of the witness Schmidt hence resulting, my portrayal of Ribbentrop's position as minister, his lack of information on the long planned preparations with respect to Norway and Denmark and other undeniably proofed facts raise the question whether H.v. Ribbentrop participated in decisions of foreign policy to a far lesser degree as is contented by the prosecution?

The hearing of evidence proves conclusively that, at least as far as Austrias annexation is concerned, he played no important part. For him Austria remained a country mutilated by "St.Germain", a country which, according to healthy principles could hardly exist and which once shared a common destiny in history with Greater Germany. The National Socialists were not the first to awaken Austria to the thought of a union with Germany . This thought had ripened since, in the German element of the Habsburg Monarchy the revolution of 1848 aimed at a democratic and Greater Germany. It was fought for by the Social-Democrats for ideological and realistic reasons after the downfall of this Monarchy. It was this very democracy that looked at the Weimar state as their spiritual offspring. The economic distress resulting from the destruction of the Danube area as an economic entity nurtured the thought of a union with the Reich which was economically better off. The National

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Socialists were in a position to utilize this fostering soil. In any event, presuppositions for a union with Germany existed, when assistance of Austria by Italy ceased, through closer relations of the former towards Germany by reason of the Abessinian conflict. Further reasons that contributed to and justified the union will be specifically stated by my colleague Dr. Steinbauer.

Reichsmarschall Goering testified that, as interpreted in the narrow sense of the law of reunion of 13 March 1938, which was signed also by H.v.Ribbentrop, the union did not even correspond with the intentions of Hitler but was arrived at by Goering himself.

As further violation of treaties the prosecution denotes the violation of Art. 80 of the Treaty of Versailles and the corresponding art. of the Treaty of St. Germain as well as the violation of the treaty between Austria and Germany of 11 July 1936.

In justification of these violations one could point out that the provisions concerned constitute a violation of the basic right of self-determination. The outcome of the vote after the annexation at any rate clearly confirms the Austrian attitude at that time.

The clausula rebus sic stantibus could be considered as a further justification of violation. One could refer

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to the statement of Under Secretary Butler in the House of Commons who, upon questioning after the union asserted that England had given no special guarantee for the independance of Austria as undertaken in the Treaty of St. Germain.

These judicial evaluations would hardly do justice to the facts. Positive law always lags behind the ideal state of justice. Such is the case not only in laws governing internal relations but also in International Law.

Events show that, if in the drawing up of treaties no provisions are contained for change of circumstances, History shatters them by revolution in order to rebuild them upon a new base.

Whether participation in such events can be l e g a l l y evaluated is questionable. To general principles of the adoptability of justice to the might of facts I shall refer later on.

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Ribbentrop's part in the Czechoslovakian Crisis.

An Englishman asserted:

"We have to face the stubborn fact that Central Europe is populated by an almost solid block of 80 million people who are highly gifted, highly organised and who are conscious of these achievements in the highest degree. The majority of these people have the strong and evidently unexterminable desire to be united in one state".

This artifically split up block, created by the Peace Treaty of 1919 was put in motion by the annexation of Austria and the racial theories of National Socialism. No attentive observer could fail to notice the effect of the annexation upon the neighboring states.

It is not my intention to take up the time of the Tribunal with the particulars of the then proceeding efforts by the various groups of Germans in the neighboring states for incorporation into the Reich. The facts which now have become history are only too well known. My task here is to exam ne whether these events are the results of a premeditated plan of an individual person or of a group of persons or whether a long and artificially stored up force assisted in accomplishing the objectives which were assigned to H.v.Ribbentrop by Hitler at the time of his appointment.

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The Anschluss of Austria was the signal for the Sudeten German Party to force the Anschluss now on their part too.

Herr von Ribbentrop had been accused by the prosecution tha in his capacity as Foreign Minister he engaged in the creating of difficulties under the Sudeten German Henlein
It further accuses him of having induced the Sudeten German Party to increase their d mands step by step instead of entering the Czecho Slowak government, and in that way of having prevented a solution of the whole problem without having made the German Government appear as pace maker...

The document 3060 PS submitted by the prosecution shows just the contrary. It is true that H. v.Ribbentrop knew that the Anschluss efforts of the Sudeten Germans received help from the party. But he had no influence on this party policy nor any thorough knowledge of it. With regard to the difficulties which had arisen with the Czech Government caused by the separation efforts of the Sudeten Germans and their partly uncontrollable policy . H. v.Ribbentrop found it necessary to take care of the realisation of the Sudeten German aims within the limits of a responsible policy.

There was at first a short calming down of the foreign situation through the Mu ich Pact. It was complicated again only through the visit of Hacha in Berlin and the concomitant events, a step Hitlers which was in this farrea ching form completely surprising to H.v.Ribbentrop

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As Reichsmarschal Goering has testified, Hitler, after th solution of Slowakia in spite of all warnings, decided upon setting up the Protectorate of Bohemia and Moravia. On the basis of the available material it might be difficult to ascertain the final reasons for Hitler's step. /According to the testimony of the defendant Goering they sprang from Hitler's lasting fear that through an alliance of the Czech officer corps with Russia the situation in the South Eastern Territory could be complicated again. This and the resulting strategical and historical reasons might have induced Hitler to this, step of 13 March 1939, which came as a surprise also to H.v.Ribbentrop.

This decision which is only understandable by Hitler's inclination for surprising decisions, brought a complete change of the German foreign policy.

Herr v.Ribbentrop had at that time with a warning demonstrated to Hitler the reaction of the Western powers, especially of England, which had to be expected as a result of this step.

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Ribbentrop's role in the Polish crisis.

The results manifested themselves immediately in the Danzig-and corridor question which had been discussed since October 1938. Whereas up to that time the Poles, because of t German policy since 1934 and the return of the Olsa territory, did not refuse discussions abou this problem, the reaction to the setting up of the protectorate could be seen immediately at the end of March. England regarded the establishing of the protectorate as a violatio of the Munich Pact and began consultations with a number of Countries. At the same time Ministe Beck, instead of coming once more to Berlin, went to London and returned from there with the assurance that England would resist any change of the status quo in the East. This declaration was also given in the House of Commons after previous consultation with the French Government.

On 26 March 1939 the Polish Ambassador Lipsk called at the Wilhelmstrasse and stated to Her v.Ribbentrop that any continuation of the revision policy towards Poland, - especially as the are concerned with a return of Danzig to the I would mean war.

This made the Polish question to an European one. H.v.Ribbentrop told the Polish Ambassador at that time that Germany could not be satisfie with this decision.

Only a clear return of Danzig and an extrat torial connection with East Prussia could bring a final solution.

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I submitted to the Tribunal in the form of documentary evidence a review of the now beginning course of the Polish crisis. I can therefore assume that the actual course of events is known, also inasmuch as they are connected with the annexation of the Memelland which was returned to the Reich through an agreement with Lithuania.

In order not to take up the time of the Tribunal unnecessarily, I confine myself to the pointing to the facts which are apt to clear the role of H.v.Ribbentrop.

The prosecution accuses H.v.Ribbentrop that during the Sudeten crisis and the setting up of the Protectorate of Bohemia and Moravia, he had lulled Poland by pretending friendly feelings. May I, in contradiction of this assertion, point out that the relations between Germany and Poland since the agreement of 1934 were good and even friendly, and that this attitude became of course even more favorable through the fact that Poland owed the acquisition of the Olsa territory to the German Foreign policy.

She had therefore every reason to harbor friendly feelings towards Germany without the necessity of a deceitful conduct on the part of H.v.Ribbentrop.As the evidence has shown H.v.Ribbentrop continued this friendly policy towards Poland even after the dissolution of Czechoslowakia as there was no reason to deviate from this attitude.

The prosecution further accuses H.v.Ribbentrop of having known that Hitler had already in spring 1939

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been resolved to start a war against Poland and that Danzig served only as pretext for this conflict. It deduces this from the documents US 27 and US 30 (L 79, 1014 PS). They deal with the well known speeches by Hitler on 23 May and 22 August 1939,

May I point out in the first place that H.v.Ribbentrop was not present at these conferences which were only for military personnel.

A number of key documents have been discussed in detail her I only wish to name the best known such as the Hossbach document, the two Schmundt files and the aforementioned speeches. Quite a number of interpretations of these documents have been the subject of the testimony. People who knew Hitler stated that they were used to extravagant ideas from him in the form of sometimes repeating and surprising speeches and that in consideration of his peculiarities they did not take them seriously.

One can present in contrast to these documents quite a number of speeches in which Hitler asserted the contrary. One can object to that by saying that Hitler had always connected a certain purpose with his utterances. That is certainly true. But it is also true that even the few key documents, submitted as proof of the aggressive war, contain so many contradictions with regard the aggressive intentions deduced from them that perhaps a critic judging retrospectively could recognize such intentions in accordance with the strict regulation for secrecy the content of these documents were for that matter only known to those who took part in the conferences.

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This makes it clear why Herr v.Ribbentrop learned to know about them only here in the courtroom.

The instructions concerning foreign policies which Hitler gave him at that time dealt solely with the re-incorporation (Rueckgliederung) of Danzig and the establishment of an extraterritorial road through the Corridor , in order to have a direct land-route to East Prussia. As the court may remember, the desirability of realizing these aims had already been mentioned by Hitler when he appointed Herr von Ribbentrop as Foreign Minister. This demand was historically just as justified, as the solution of the preceeding incorporation of areas which were inhabited by Germans became inevitable in this case. The status of the purely German city of Danzig, which had been determined by the Treaty of Versailles in the course of the erection of a Polish State, had always been the cause of frictions between Germany and Poland. Poland had effected this solution at Versailles on the basis that it needed an outlet to the sea. For the same reason, yet against all ethnological needs,the Corridor was established. Already Clemenceau in his memorandum pointed to this artificial creation as a source of danger, especially due to the fact that the people united in this area had been separated through long years of bitter enemity. It was not difficult to foresee that, as result of this fact, the League of Nations and the International Court at the Hague would be occupied not only with current complaints against violations of the Agreement for Minorities. The same cause gave rise to confiscation of German real estate on the largest scale up to 1 Million hectar and the expulsion of far more than 1 million Germans in the course of 20 years. Not without reason had Lord d'Abernon spoken

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of the Danzig-Corridor -problem as of the "powder -barrel of Europe". If then efforts were made to solve this question, recognizing the Polish right for maintaining on outlet to the sea, such efforts were justified from the standpoint of history and common sense.

The evidence showed no basis whatever for the assumption that this question served as a pretense only, of which Herr v. Ribbentrop must have been aware. No evidence has been produced that Herr v.Ribbentrop was acquainted with Hitler's aims, which far exceeded these demands.Just as little has it been proved that Herr v.Ribbentrop before 1 September 1939 - as has also been asserted by the prosecution - did all he possibly could to avoid peace with Poland, although he knew that a war with Poland would draw Great Britain and France into the conflict. The prosecution bases this statement on document TC 73. This involves a report of Lipski, the Polish Ambassador in Berlin, to his Foreign Minister. The document contains nothing whatsoever to substantiate this assertion.

Moreover , I do not believe , that according to the result of the evidence, Lipski can be counted as classical witness. May I recall that it was Lipski who, during the decisive stage of negotiations before the outbreak of the war, remarked that he had not the least cause to be interested in notes or propositions from the German side. After a period of 5 ½ years as ambassador

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in Germany, he was very well acquainted with conditions there. He was convinced that in case of war unrest would break out in Germany, and that the Polish Army would march into Berlin victoriously.

According to the testimony of the witness Dahlerus it was exactly Lipski, who during the decisive discussion at the Polish Embassy created the impression with the Swede, that Poland was sabotaging every possibility for negotiations.

Further results of the evidence also speak against the above allegetions of the prosecution. So for instance the fact, that Herr v.Ribbentrop knowing that the Polish - English Guarantee - Pact had been signed, by his intervention with Hitler caused the latter to recall the marching-orders for the Armed Forces, because, according to his conception, a conflict with Poland would also involve the Western Powers. This conception is identical with the conclusions, Herr von Ribbentrop drew from his opinion of the European situation, voiced in the already mentioned document TC 75.

Ambassador Schmidt has testified here, that it was Herr v. Ribbentrop who on 25 August 1939 , after the Hitler - Henderson meeting, sent him to Sir N.Henderson with the verbal communique presented as TC 72/#9 in which the contents of Hitlers propositions were drawn up. With it Herr v. Ribbentrop combined the urgent request,

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at once and in person to warmly recommend to the British Government Hitler's proposition. According to the English Blue Book, Sir N. Henderson could not refrain from calling these proposals exceptionally sensible and sincere. They did not represent the usual Hitler - proposals, but "proposals of the League of Nations".

Anyone studying the negotiations of the succeeding fateful days can not deny that everything was done on the German side, to get at least negotiations on a workable basis underway. The opposite side would not have it thus, because the decision had been made to take action this time. The good services of England ended with the breaking off of all mediation without having been able to bring Poland to the table of negotiations.

Herr v. Ribbentrop has been blamed for having practically defeated the purpose of the last decisive discussion with the British Ambassador Henderson by having read the German proposals to Poland so fast, contrary to all diplomatic custom and international courtesy, that Sir N. Henderson could not understand them, and, hence, could not pass them on. The interpreter Ambassador Schmidt was present at this decisive discussion. He has testified here under oath, that this statement is not true. One may consider Hitler's order, to acquaint Sir. N. Henderson only with the substance of the memorandum, as unwise. The fact is, that not only did Herr von Ribbentrop read the entire contents at a normal speed to the British Ambassador,

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but he also, by having the interpreter present, made it possible for Sir N. Henderson to become familiar with the entire contents and, moreover, to have explanations given on it. Besides, upon the initiative of Reichsmarschall Goering, it was transmitted to the British Embassy during the same night by dictation to the Counsellor of the Embassy Forbs. Thus the British Government should have been able, to render the good services, offered for opening negotiations based on positive propositions.

By reason of these facts here deposed, one must rightly doubt the allegation to be true, that the defendant had done everything, to avoid peace with Poland .

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II.

The Outbreak and Extension of the Second World-War.

Causes of war.

At the beginning of my defence speech I stressed, that legal considerations concerning aggressive war are not possible without knowledge of the presuppositions leading to an armed conflict. Before I proceed to the legal aspects of the conflict with Poland, may I make some additional statements concerning the causes that led to the war.

The period between two world-wars is characterized by the mutual reactions of those powers which were satisfied and those which were dissatisfied. It seems to be an inevitable law that, after great war shocks, the victorious states tend as far as possible towards the reestablishment of the pre war status and pre war mentality, wheras the conquered are forced to find a way out of the consequences of their defeat by new means and methods. That way the Holy Alliance came about after the Napoleonic wars, and under Metternich's leadership, using the legitimacy as an authorization, it tried to ignore the effects of the French Revolution.

What the Holy Alliance did not achieve the League of Nations did not succeed in either.

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Created in an atmosphere of fervent belief in human progress, it was quickly transformed into a tool of the saturated states. Every effort to "reinforce" the League of Nations, meant a new bulwark for maintaining the status quo. Under the elegant diction of juridical proceedings power-politics continued. Besides, the obsession by the idea of "sécurité" soon deprived the newly-created body of any breath of freshness and life. In this fashion naturally a solution of the problems, created by the end of the first world-war, could never be founded. In international relations the interests of conservative powers content with the status quo and those of the revolutionary powers trying to do away with it, were found to be in growing conflict. It could only be a question of time, when under these circumstances the political initiative would pass to the discontent powers. The formation of this front depended exclusively on the force of the revolutionary spirit, which cristallized in opposition to political complacency and longing for the past. On this fostering-soil grew the doctrines of National Socialism, Fascism and Bolshevism obscure in many parts of their programs, elastic and incoherent in others. Their power of propaganda was based not so much on their programa but on the fact that they admittedly brought something new and that they did not exhort their followers to worship a political ideal, that had failed in the past.

The economical crises of the post-war period, the controversies about reparations and the occupation of the Ruhr,

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the fact that the democratic governments were not capable of attaining anything for their peoples in need from the other democracies, unavoidably led to test the doctrines which had not been tried out yet. The practical results of this revolution, as we experienced them in Germany after 1933, could, aside of the social program, only consist in abolishing the peace settlements of 1919, which were a classical example of the failure in understanding of the revolutionary character of a world-crisis. These tasks were for this revolution no juridical questions but doctrines, exactly as it had already for a long time become a doctrine for the saturated states, to keep up the status quo at all costs eventually at the costs of a new world-war.

Only he who does not shut his eyes before these facts, can judge the political crises of the past decade.

Every revolution has but two possibilities, either it meets so little resistance, that eventually conservative tendencies develop and an alloy with the old order is formed, or the antagonistic forces are so strong, that finally the revolution breakes due to its having oversharpened its own means and methods.

Nationalsocialism went the second way, which began so unbloody and, in parts, with a remarkable bias towards tradition. But it too

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could not escape the laws, inherent in history. The aims were too high for one generation, the revolutionary essence too strong. The successes in the beginning were stupefying. But they also caused a lack of criticism as to the methods and aims.

It would most probably have been achieved to all larger German groups in the Central European space, if, at the end - I mean in setting up the protectorate Bohemia and Moravia and in following up the Dantzig corridor question - revolutionary speed and methods had not been carried to excess as a result of previous successes. No soberly judging person will deny the right to gain a solution in the Dantzig corridor question, delicate as it was.

The prosecution wants it, that,in reality, Dantzig was but a pretext. Seen from the state of affairs in 1939 this cannot be proved. But it is sure that, also the opposed party was concerned with other things but the keeping up of the status quo in the East. Nationalsocialism and with it the in its newly gained strength German Reich had become such a danger in the eyes of the others, that after Prague,one was determined to make any further German enterprise a "test case", whereever it should happen.

I have already said, that the revolutionary process in Central-Europe was caused in the first place by economical conditions of "Versailles"

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At Versailles on Germany was imposed a treaty of peace, of which it was well known, that the conquered could not comply with its economical provisions. Many things have been said here about the slogan "L e b e n s r a u m". I am convinced that this word would never have become a political program, if after the first world-war one would have given Germany the possibility to link up with the world markets, instead of strangling her economically. By systematically cutting her off from all places where raw-products occurred in the world - all this because for "sécurité" reasons - one of course fed the tendency towards Autarky, the inevitable way out from the barring from the world markets and, at the same time, one allowed, as the economical situation became more aggravated, the cry for Lebensraum to fall on fertile soil.

So Stalin is right, when he says:

"It would be erroneous to believe, that the second world-war came about in a haphazard way or resulted from faults of one or the other of the statesmen, though such faults were made without doubt. In reality the war resulted inevitably from the development of international economical and political forces based on modern monopolistic capitalism." *)

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*) Stalin's speech on the eve of the Sowjet-elections in February 1946.

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Remarks concerning World War II considered from the point of view of illegal attack.

Professor Jahrreiss has already thoroughly proven in his basic arguments concerning the legal and the actual signification of the Kellog agreement that the defense cannot attach to this war prevention program the meaning given to it by the prosecution.x)

It is true that war has already been previously declared an international crime, especially at the 8th League of Nations assembly of 1927; however, at preliminary conversations- and the fact has been proven by documents already submittet to the Court - it was agreed upon that this declaration does not make war a crime in any legal sense, but is rather the expression of a wish to prevent, for the future, international catastrophes on a world war I scale. Moreover, neither the U.S. nor the U.S.S.R. participated in the League of Nations resolution of 1927.

x) Mr. Justice Jackson tries, in this connection, to refer to article 4 of the Weimar constitution of 1919. According to this article, universally acknowledged rules of international law are binding parts of German Reich law. With regard to the differences in juridical interpretation by the great powers of the Kellog pact its interpretation by the prosecution cannot be considered as German Reich law.

Cf. Reich Supreme Court decisions in civil cases, vol.103, p.276.
Anschuetz: "The Constitution of the German Reich", 10th edition, p.58 etc.

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Any further projects of outlawry of war in the period between world wars I and II, remained mere projects- and the British prosecutor had to acknowledge this in the course of his significant argumentation- because practical politics could not follow these moral postulates.

All these experiments - and they are by no means few- clearly show that the problem of definition lies in the difficulty of condensing a political event, depending upon a host of components, into a juridical concept susceptible of covering any of the many- shaped cases occurring in fact. The failure to formulate a definition which could be used in international law has led to this, that instead of working out universal characteristics to be used in every single case, the designation of the aggressor has been left to the decision of an organ superior to the contending parties. In such a way, the question of defining the aggressor became the question: "quis judicavit", i.e. "who designates the aggressor." From this decision follows a new difficulty: what is to be done against the aggressor?

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Previous to the attempt of settling in a general way the concept of aggression and the sanctions against the aggressor, political alliances determined the obligations of the parties to wage war. In order to improve this unsatisfactory, anarchic situation, the United States, under Secretary of State Bryan, took the initiative, in a series of separate treaties, to agree upon delays of respite, which were meant to postpone an outbreak of hostilities, and to allow the passions to cool down.

The statutes of the League of Nations took up this point of view, but went one decisive step further by determining a procedure for establishing by League organs the permissibility or non-permissibility of war. The decision purported whether the war was permitted or not by the statute. The aim of this settled procedure was to hit the disturber of international order, who was not necessarily identical with the aggressor. The state which went to war in accordance with the resolutions of the League of Nations organs behaved in a lawful way, even when undertaking preliminary hostilities, amounting to an aggression in the military sense.

It was therefore apparent that the discrimination between aggressor and attacked was not sufficient to secure an equitable settlement of international relations.

Although these statutary definitions and the proceedings based thereon pointed out that the antinomies lawful -

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unlawful, permitted - prohibited, aggressor - attacked did not apply, it was still being tried to brand the transgressor of international order through the concept of the aggressor. As the material decision failed owing to the difficulties just mentioned, it was tried to make out of the indeterminable juridical concept a political decision of the League of Nations organs qualified for maintaining international order. Such was the case in the draft of a mutual assistance agreement elaborated in the year 1923 by order of the League of Nations assembly. The Geneva protocol, which was meant to supplement the statute inadequacies concerning the question of conflict settlement, also transferred to the League of Nations council the decision of determining who had violated the agreement and was, therefore, the aggressor.

All other attempts for outlawing war and settling conflicts mentioned by the British chief prosecutor have remained drafts, excepting the Kellog Pact.

It can probably put down to this fact that the idea of a juridical definition of the aggressor was once more taken up at the disarmament conference. In this way the definition was established in the year 1933 by the committee for security questions, guided by the Greek Politis, of the general disarmament conference committee.

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Owing to the failure of this conference, the definition was made the object, in the same year, of a series of separate treaties, at the London conference . The only great power participating was the Soviet Union, which had taken the initiative of the definition at the disarmament conference. This definition has also been adopted by the United States chief prosecutor, who has based thereon the indictment for a crime against peace, before this tribunal. This definition is no more than a proposal of the prosecution within the limits of the statute, which does not circumscribe the concept of a war of aggression. It must be emphasized that Mr. Justice Jackson cannot invoke in this matter any universally acknowledged principle of international law.

The report of the 1933 commission did not become the object of a general treaty, as projected, but was merely agreed upon between a number of individual parties in agreements binding only for the concerned. As a matter of fact the only agreements were those between the Soviet Union and a number of states around it. No other great power accepted the definition. In particular, Great Britian kept aloof, notwithstanding the fact that the separate agreements mentioned were actually signed in London. At least the participation of the great powers would have been required for the constitution of an international law principle of such far-reaching importance for the reorganization of international relations.

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Besides this juridical way of treatment the utterances of British and American chief prosectuors show that also as far as facts are concerned the proposition does not give much satisfaction. In the important question of point 4 of the definition, the British differs from the American accusation. The old conflict of interests between mare liberum and mare clausum has led the prosecution to Sir Hartley Shawcross not mentioning the naval blockade of the coasts and ports of a state as aggressive action.

The definition of 1933 may offer valuable characteristics for establishing the aggressor, but one does not get around the fact that a formal juridical definition shows the impossibility of doing justice to all actual political cases.

At the experiment to set down new regulation for creating order in the world in the Charter of the United Nations one returned, evidently having recognized this truth, to the idea of a decision by an international institution, without wanting to squeeze its judgement in to the bed of Procrustes of a rigid definition. The Charter ofPeace of San rancisco says, in chapter VII Art.39:

> "The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security."

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In 1939 there was neither a recognized definition of the aggressor nor an institution authorized to designate the aggressor.

The League of Nations as institution for the settlement of conflicts had completely failed. This was expressed outwardly already by the part that three great powers had left it How little the League of Nations-Torso was taken notice of in international life, was shown by the attitude of the Sowjet-Union in the Finnish question. It did not take into consideration in any way the decision of the League of Nations but followed in its dealings with Finnland its own interests.

If now after these statements I make a proposal to the court, of what should be understood by the word "attack" in article 6a of the charter, this qualification can not link up with a definition recognized in international law. We, therefore, must start off from the suppositions, which the practices of states and the traditions of diplomacy are wont to connect with it.

According to the conception existing in 1939, the outbreak of war, in whatever way it happened, was not valuated juridically.

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The Kellogg-Pact and the negotiations following it have not been able to abolish this fact which was the result of a development of centuries. This is to be deeply regretted but one can not go past reality. That this opinion is in accordance with the conception of international law of the main participating powers that had signed the statute when war broke out follows from the fact that men of international reputation in the field of international law were of the opinion that, should the Kellogg-Pact and the system of collective security fail, the traditional legal conception as to war was still valid. x)

Was Herr von Ribbentrop obliged to have the opinion in 1939 that his acts, measured by the tradition of diplomatic technique, would be valuated as crimes punishable by international law?

I have already pointed out, that generally and therefore also by Herr von Ribbentrop the then existing frontier line in the East was considered not to be tenable in the long run and was, therefore, considered to be needing some adjustement.

The Peace Conference (1919) created problems, by satifying the Polish demands when this state was newly created, problems, which could not be solved by international cooperation in the time during the two world-wars.

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x) Oppenheim-Lauterpacht, International Law, 5th Edition page 154.

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These frontiers could never be guaranteed in side a system of European pacts. In the Locarno-treaties a guarantee for the Eastern frontier created by Versailles could not be reached because of the opposing interests of the participating powers, whereas for the Western frontiers it was arrived at. All that was achieved after endless efforts were arbitration treaties, connected to the Locarno system, between Germany and Poland and Germany and Czecho-Slovakia. They did not contain any guarantees for frontiers but only methods for settling litigations. I shall deal with them when I come to the various violations of treaties which Herr v. Ribbentrop is blamed for.

After Hitler had also expressed his distrust towards collective security by leaving the Disarmament Conference and the League of Nations, he went over to the system of bilateral treaties. At the preparatory negotiations to the agreements between Poland and Germany of 1934 it was clearly stated, that between the two states a solution of the problems should be found in the spirit of the treaty. We will not suppress here, that for this settlement but peaceful means were considered and a 10-year non-aggression pact was concluded. Whether Hitler believed honestly in the possibility of solving this problem or hoped to change the untenable situation in the East by means of evolution is of no importance for the forming of an opinion on Herr v. Ribbentrop's behaviour. He did not take any initiative in this step, but found this agreement as an existing political and juridical fact.

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The experience of settling international interests teaches that agreements are durable only when corresponding to political realities. If that is not the case, the force of facts oversteps of itself the original intention of the contracting parties.

A great statesman of the 19th century has expressed this truth by saying : "The element of political interest is an indispensable lining of written treaties."

Thus, the Eastern question was not removed by the agreement of 1934, but continued to burden international relations. As shown by the evidence, it became more and more clear in the course of political evolution that sooner or later solutions of some kind had to be attempted. Both the statute of the Free City of Danzig, which was in contradiction with ethnological, cultural and economical facts, and the isolation of Eastern Prussia through the creation of a corridor had brought about causes for conflict, which a number of statesmen feared as far back as when at Versailles.

Taking into consideration such a state of things, the English guarantee declaration to Poland of March 21th 1939, enlarged on August 25th 1939 into the mutual aid agreement, was susceptible, in case of the appearance of a possibility of conflict with this country, of making the Poles averse, from the first, to a sensible revision, even within a moderate frame.

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This guarantee declaration shows once more how much Great Britain drew conclusions, taking a sensible political view, out of the decline of the collective security system, and how small a confidence it had in the practical results of the moral condemnation of war through the Kellogg-Pact.

Mr. v. Ribbentrop had, therefore, to draw the conclusion out of the behaviour of Great Britain, that the attitude of the Polish Government, from which Germany was entitled to expect some concession, was bound to become rigidly inflexible. The development during the following months proved this prevision to be right.

The stepping-in of the Soviet Union into the conflict demonstrates in particular that the coming danger would take place within the compass of the usual principles of politicsland the carrying through of the interests of one's own country. The Soviet Union too had, on her side, left the ground of the collective security system. She looked at the approaching conflict from the viewpoint of Russian interests exclusively. As things were, Mr. v. Ribbentrop took pains to, at least, localize the threatening conflict, if it could not be avoided. He could rightly hope to succeed in this endeavour, as both powers primarily interested in Eastern Europe, the Soviet Union and Germany, concluded the non-aggression and friendship agreement previous to the outbreak of armed hostilities. At the same time, they came to terms, by way of a secret agreement, concerning the future fate of the territory of Poland and the Baltic countries.

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Nevertheless, the machinery of the assistance agreements was released, and thereby the local Eastern European conflict became a world conflagration.

If one wants to apply a juridical standard to these facts, one cannot do so without taking into consideration the Soviet Union from the point of view of participation.

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The extention of the war and its causes.

The conflict in Eastern Europe grew, through the participation of Great Britain and France, into a European one, neccessarily followed by the universal conflict. The entry in the war of the powers mentioned took place according to the forms provided by the 3rd Hague Convention concerning opening of hostilities, i.e. an ultimatum with conditional declaration of war.

At the session of March 19th, 1946 (record p.6135) Mr. Justice Jackson, interpreting the indictment has stressed the point that the extension of the war brought about by the Western powers did not constitute a punishable aggression on the side of Germany. This interpretation is in keeping with his general argumentation concerning the notion of aggression. Should he want to carry this through quite consistently, he would logically have to declare Great Britain and France aggressors of Germany, for having brought about the state of war by means of the ultimatum.

I believe I am sharing the prosecution's viewpoint when I give voice to the supposition that such a result would not meet the prosecution's approval. The prosecution has brought forward its evidence in such a way as to enter into the politically historical background of the war. It has accordingly not been satisfied with relying on the formal juridical definition or any single criteria thereof.

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It accordingly confirms my conclusion presented by me to the Court, that the definition proposed by the prosecution is no suitable base for the qualification of the indeterminable concept of aggression.

May I be allowed to summarize the events at the outbreak of the war:

> Kellog Pact and aggression concept, the prosecution's pillars, do not support it. The Kellog Pact had no juridically expressible contents, neither for the countries nor, and even much less, for an individual. The attempt to put life into it afterwards by means of a formal concept of aggression, was frustrated by political reality.

Denmark, Norway.

Mr. v.Ribbentrop's share in the extension of the conflict to Scandinavia was so small that it hardly can be put to his charge as a separate action.

The interrogations of the witnesses, Great-Admiral Raeder and Field-Marshal Keitel, have shown beyond doubt that, as a matter of fact, Mr. v.Ribbentrop was informed of this operation for the first time only 36 hours in advance. His contribution was solely the elaboration of notes prescribed to him in contents and form.

Concerning the actual side, viz. the imminent violation of Scandinavian neutrality by the Western powers, he had to be content with the

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informations communicated to him. The evidence has shown, and I shall expose later on in juridical arguments, that he was, as Minister for foreign affairs, not competent to check those informations, and that he did not possess any actual means to do so. Presuming that these informations were true, he could justly assume that the German Reich behaved, in the intended action, according to international law. I leave more detailed argumentation concerning this point of law to my colleague, Dr.Siemers, well conversant with this point, whose client, Great-admiral Raeder, had submitted to Hitler a large part of enemy information and the proposal for a German occupation of Scandinavia.

Belgium, the Netherlands, Luxemburg.

In the case Belgium, the Netherlands it has been proven by evidence that an unrestrained maintenance of the neutrality of the Belgian-Dutch territory by these countries could not be guaranteed. Previous to the war, there already existed between the general staffs of the Western powers and those of both neutral countries agreements and current exchanges of experiences concerning behaviour and occupation in case of a conflict with Germany. Detailed deployment plans and fortification systems built under supervision of detached officers of the Western powers were meant to prepare the reception of allied forces. These projects comprehended not only a cooperation of the armies concerned, but also the assistance of certain civilian authorities, for the purpose of carrying out supplying and advance of the Allies.

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Important about these preparations is the fact that they were made not only for the case of defense : but also for the offensive. For this reason Belgium and the Netherlands also could not or would not prevent it that British bomber formations continued to fly over them, whose near aim was the destruction of the Ruhr-district, the heel of Achilles of the German war industry. This area was also the main goal of the Allies in case of an offensive on land.

These intentions as well as the most intensive preparations for offensive measures by the Western Powers had been ascertained beyond a doubt by sources of information. The grouping of the offensive forces showed that the Belgian-Netherland territory was included in the theater of operations. As has already been described in connection with preceding cases of conflict, such information was currently passed on to Herr v. Ribbentrop by Hitler or his deputies. Here too Herr v. Ribbentrop had to rely upon the accuracy of these informations without having the right and the duty of checking on them. In that way he, too, became convinced that in order to avert a deathly danger - namely an allied thrust into the Ruhr-district - preventive counter-measures were necessary. On the basis of these considerations Luxembourg simply could not be spared because of the extensiveness of modern military operations.

In connection with this procedure the prosecution accuses, among others the German Foreign Policy and thereby Herr von Ribbentrop, to have made plans to march in, in contradiction to the 5. Hague Convention concerning the rights and duties of neutral powers

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and persons in case of war on land. (Convention concernant les droits et les devoirs des puissances et des personnes neutres en cas de guerre sur terre.)

In this connection it was overlooked by the prosecution that this convention does not have reference to drawing a neutral into a war between other powers, but deals only with the rights and duties of neutrals and belligerents as long as the neutrality status exists.

The prosecution has made the mistake to apply its erroneous interpretation of the Kellog-Pact, as I have shown, to the pact which had been made 20 years earlier. There remains no doubt that, at the time of the 2.Hague peace conference, the law did not evaluate the outbreak of war as a legal but only as a historical fact. All conventions concerning laws of war, especially the Rules of Land Warfare and the Neutrality-pact for Land- and Sea-Warfare, are built upon the basis of an existing state of war, hence do not regulate the jus ad bellum, but the jus in bello.

This fact disposes of the prosecution's references to the 5. Convention of the Hague in all cases of the spreading of the war to the neutrals which have ratified this convention.

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It is, moreover, quite doubtful whether the Locarno-Treaty can be mentioned, as it was done by the prosecution in connection with drawing Belgium into the war. With Germany's renunciation in 1935 the Locarno-system had collapsed, as will be shown by the defense-counsel of Freiherr v. Neurath. All attempts to effect a new union which was to takeits place, were guided by the fact, that the actual situation created by Germany must be taken as the starting point for a new agreement. This may be seen especially from the British and French plans for the intended new agreement. The attempt to create a new agreement was not successful. However, the thorough and long drawn out negotiations show very distinctly, that none of the signatories considered the treaties (?) of Locarno valid any longer. On the contrary the Western Powers proceeded to consider among themselves the effects which their obligations of guaranteeing the Western borders still held after Germany's withdrawal.

Regardless of how one may judge Germany's attitude of 1935, it remains to be stated that with it the pact-system had lost its validity. Hence in 1940 German commitments to the Western Pact of 1925 did no longer exist.

I shall, on a later occasion, discuss the arbitration conventions with Belgium, Poland and Czechoslovakia in connection with the Locarno-Treaty when discussing in general Germany's obligation for a peaceful settlement of disputes.

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As far as Luxembourg is concerned, not even the prosecution referred to the neutralisation of this country Evidently it went on the assumption that Germany had been forced by the Treaty of Versailles to give up its rights given to her by the London agreement of 1867.

Jugoslavia: When, on 24 March 1941, the Jugoslav Government joined the Tripartite Pact, Herr v.Ribbentrop could not in the light of the available news, assume that, a few days after the joining, a military intervention by Germany on the Balkan would be necessary for political reasons. This situation was caused by the forcible change of government in Belgrade. The reaction to the joining of the Tripartite Pact by the government Stojadinowitsch resulted in a new political change in Jugoslavia under the leadership of Simovitch which aimed at a close cooperation with the Western Powers counter to the idea of the Tripartite Pact.

In view of this uncertain situation in the interior of Jugoslavia which, because of the mobilisation of the Jugoslav army and their deployment on the German frontier became a danger for the Reich, Hitler suddenly decided on military operations on the Balkan. He made this decision without the knowledge of Herr v.Ribbentrop, with the idea in mind to eliminate an imminent grave danger for the Italian ally.

The testimony of the witness Col.General Jodl has shown beyond a doubt, that Herr v.Ribbentrop, after Hitler's decision and after the Simovitch Putsch, seriously endeavoured to be allowed to exhaust all diplomatic possibilities prior to the beginning of military operations.

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Colonel-General Jodl has confirmed there that H.v.Ribbentrop's endeavours were rejected in so rude a manner that, taking into consideration Hitler's nature and the prevailing methods, any influence on Hitler was practically out of question.

The fact that since March 4th, 1941, strong British forces were pushing to the North from southern Greece, made a further localization of the Italian-Greek conflict impossible. This war had begun in the autumn of 1940 against German wishes, but Hitler could, with a view to the general situation, certainly not tolerate the imminent defeat of his Italian ally.

When H.v.Ribbentrop on August 23rd,1939, signed at Moscow, the treaties between Germany and the U.S.S.R., including a secret agreement concerning the Division of Poland and the surrender to Russia of the Baltic states, the ideological discussions -in part, of an extraordinarily vehement nature, between national socialism and bolshevism, were, for the time being, eliminated from the international sphere, where they formed elements of possible danger. This system of treaties, to be supplemented in the course of the next month, had a favourable influence on the opinion concerning Hitler's foreign policy of large circles of the German people, which were alarmed by the ideological contrasts.

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Since the Reinsurance Treaty signed by Bismarck with Russia there was a general conviction in Germany that the maintenance of friendly relations with Russia must always be the goal of our foreign policy.

For the just mentioned traditional reasons Herr v. Ribbentrop considered these pacts a strong pillar of the German Foreign policy. Because of this opinion he invited in Winter 1940 the Foreign Commissar of the Soviet Union, Molotov, to Berlin, to clear up problems which had arisen in the meantime. Unfortunately the conference did not bring the desired results.

Hitler became very much alarmed by this conference and by secret information, as about the future attitude of the Sovjet Union towards Germany. Especially the attitude of Russia in the Baltic countries as well as the Soviet march into Bessarabia and into the Bukowina were considered by Hitler as actions which were apt to endanger the German interests in the Baltic provinces and in the Rumanian Oil district. He furthermore saw in the attitude of the USSR the possibility of taking influence on Bulgaria. He could consider the Friendship Pact with Jugoslavia on 5 April 1941 as a confirmation of his suspicion, as it occurred at a time when Jugoslavia, after a change of government, threatened to turn over to the Western Powers.

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In spite of these misgivings of Hitler of which he frequently informed Herrn v.Ribbentrop, the defendant tried to avoid the tensions. The Tribunal has permitted me to submit an affidavit which confirms that Herr v. Ribbentrop still tried in December 1940 in an extensive discussion to induce Hitler to give him/authority for the inclusion of Russia in the "Dreierpakt" (Tripartite Pact). This documentary evidence confirms that Herr v. Ribbentrop after his conference could have been of the opinion that he would succeed in this step through the consent of Hitler. (Subsequently,) Hitler however, returned again and again to his misgivings which were strengthened by the news of his own secret service about military operations on the other side of the Eastern border. In spring 1941 Herr von Ribbentrop tried to bring to Hitler in Berchtesgaden, the then Ambassador in Moscow and one of his subordinates. Both diplomats were not admitted. This ended Herrn v. Ribbentrops possibilities in his position under the regime. He afterwards also believed that he could no longer shut his eyes to the information which was brought to his knowledge.

once more

As Col.Gen.Jodl had testified, he and all the Commanders in Chief who took part in the beginning of the Russian campaign, were convinced that they had pushed right into the midst of an offensive concentration of troops. This is proven by, among other things, maps which were found and which covered the territory on this side of the German Russian line of interests. Can one really

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believe that this conduct of the Soviet Union is in agreement with the Non Aggression Pact?

U.S.A. Around that time the danger of a spreading of the European war into a world war began to stand out more and more threatening. The United States proclaimed a neutrality law at the beginning of the war, in which they submitted in advance to fixed rules in case of a future war. The mechanism of the neutrality law was set in motion by a proclamation of the President. It designated at the same time the danger zone within which American ships could not count upon the protection of their government.

This attitude at the beginning of the war confirms that the United States, the author of the Kellogg-Pact were not of the opinion that the traditional law of neutrality had in any way been modified by it.

The U.S.A. , however deviated during the course of the spreading and the aggraviating of the European war more and more from the original line, without the German Reich furnishing any cause for conflict with U.S.A.

According to the experiences of th' first world war German general opinion and consequently that of Herr v. Ribbentrop was for a prevention by all means of an intervention of the U.S.A.

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Since the quarantine speech of President Roosevelt in 1937 strong contrasts could be noticed more and more in the ideological-political train of thoughts of the world's public opinion. The situation was aggravated by the incidents of November 1938 in Germany, which were the reason for the recall of the Berlin Ambassador to Washington for reporting, from where he did not return to his post.

If, in spite of that, the neutrality policy was further prepared by legislative actions and became effective at the beginning of the war, the German Foreign Office and Herr v.Ribbentrop could conclude that the existing difference of opinion as to the internal political form of the state would not change the neutral attitude of the United States. Because of this expectation not only everything that could produce unfavorable effect in the U.S.A. was avoided since the outbreak of the war but we also acquiesced to quite a number of actions by the U.S. which were weakening Germany and were not in accordance with strict neutrality.

The world public was informed of the accordance of the political aims of the neutral America and the belligerent Great Britain, when the leading men of the two states proclaimed in August 1941 the Atlantic Charter as the program of the new order of the relationships between the nations.

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It had an obviously hostile character against the axis powers and left them no doubt that the U.S. had sided with the other side

There followed the incidents on the high seas which, as the evidence has shown, can be credited to the account of the material support of Great Britain by the United States.

In occupying Island and Greenland in summer and fall 1941 the U.S.A. took over the protection of the most important line of communication of the then severely struggling British Empire. This was a military intervention already before the outbreak of the officially declared war. The so called shooting order of the President brought about a dangerous situation which could result any day in the outbreak of the armed conflict. Already several months before the 11 December 1941 the U.S.A. took measures which used to be taken only during a war. The outbreak of the war was only a link in a chain of successive incidents. perhaps not even the most important. It was caused by the Japanese attack on Pearl Harbor, which, as the evidence has shown, was neither instigated nor could have been foreseen by Germany.

According to the formal definition of the aggression the declaration of war is one of the criteria for the determination of the aggressor. As I already pointed out in connection with the spreading of the war in Europe this

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criterion alone without the factual backgrounde is no positive proof for an aggression. As reaction to the numerous neutrality violations by the United States, which represented already actions of war, the German Reich would have been justified for a long time to reply on her part with military actions. Whether this right was exercised after a preceding announcement , that is a declaration of war or not, is immaterial.

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The legal and actual aspects of violations of international treaties.

So far, I have thrown some light upon aggresive acts as enunciated by the prosecution, from the beginning of the Polish Campaign to the entry into the war of the United States. It remains to take up a juridical position regarding the treaties, concluded by Germany, and which provided for a pacific settlement of political conflicts.

H. v. Ribbentrop is charged not only with having been a party to aggressive acts, but also with his omission to release the mechanism of aforesaid treaties previous to armed conflict. From the fact that the ways for pacific settlement, as provided by the treaties, have not been used, the prosecution draws the conclusion that these omissions can be attributed, in a criminal sense, to H. v. Ribbentrop. This interpretation, however, would be erroneous in a legal sense.

If we begin by sharing the prosecution's point of view, we shall see that even in this case the conclusions drawn by the prosecution cannot be upheld. Even if a single minister could be made legally responsible for the non-operating of a set of treaties,

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the prosecution cannot but ask whether the minister was actually in a position to ensure a result of any legal consequence. According to a principle embodied by nature into any system of criminal law on earth, a defendant is punishable for an omission only if he had actually been in a position and legally liable to act. I shall demonstrate at length, within the compass of my arguments concerning the conspiracy, how small, in fact, H. v. Ribbentrop's possibilities of influence have been. The decisive point at issue is the fact that he was not legally in a position to make any declarations, to foreign powers binding the German Reich, other than those he was empowered to do by the head of the state. As head of the state, Hitler was the representative of the German Reich from the point of view of international law. He only was in a position to make binding declaration to foreign powers. Any other persons could legally bind the German state only if authorized by the head of the state, unless, the treaty in question explicitly provided otherwise.

It is not a characteristic of the German Fuehrer state only that the foreign minister cannot independently enter into binding commitments towards foreign powers. It is rather a general principle of international relations that only the organ empowered to represent the state is apt to act for it.

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The difference between German conditions and those of democratic constitutions merely lies in the fact that in the former the foreign minister usually has got a larger internal influence on the intentions of the head of the state. The defendant, therefore, could not have obtained any legal result if he had tried, against the Fuehrer's wish, to have recourse to the possibilities of settlement of conflicts as provided by the numerous treaties of arbitration and conciliation. No one but Hitler could have put in motion such a procedure. The defendant could have been in a position to do so by Hitler's order only. He had not even a claim on giving advice, if Hitler chose to ignore him.

These points of view apply e.g. to the following treaties enumerated by the prosecution.

Convention for Pacific Settlement of International Disputes of 1899 and 1907. Treaty of Arbitration of 1929 between Germany and Luxemburg.

It should be mentioned, moreover, that these agreements did by no means provide an obligatory settlement of political disputes.

As to treaties of arbitration and conciliation with Poland, Czecho-Slovakia and Belgium, concluded in connection

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with the Locarno treaty, the additional point applies - quite besides the legal argument just mentioned - that they and the Western pact form a political unit. Even externally, this is expressed in the fact that these agreements and the Locarno pact are all of them annexes to the general final protocol of the powers participating in the Locarno conference. The question could, therefore, be asked whether the arbitration treaties share the fate of the principal treaty, i.e. the Western pact.

I should particularly like to point out that the procedure, laid down in these treaties had finally led, in case of non-settlement, before the League of Nations Council, wherein, at the time of the Western pact, the 4 participating great powers had, or - as was the case for Germany - was to have permanent seats. The withdrawal of Italy and Germany from this political body deeply affected the principle of the political base which supported the settlement treaties. Moreover, the grouping of the powers had shifted so much that a part of the Locarno great powers, viz. Great Britain and France, had in the year 1939, gone into binding agreements with Poland, so as to take sides beforehand in the event of a possible conflict.

Concerning the treaties of arbitration and conciliation with Denmark and the Netherlands of 1926, I may be allowed to point out that the proceedings provided therein could not be applied at all, as there were no conflicts between Germany and aforesaid countries, quite to the contrary.

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Germany took steps which were aimed at the enemy belligerents, which were meant to be preceded in the occupation of these countries.

The prosecution mentions, moreover, a number of assurances given by Hitler to countries with which Germany waged war afterwards. As H. v. Ribbentrop did not give such assurances in person, his participation could form a point of argument only if he had given advice to Hitler in this respect. No evidence has been produced to sustain such a suggestion. A large part of these assurances is contained in speeches made by Hitler before a German public, either in mass meetings or at the Reichstag. It is doubtful indeed whether such declarations, addressed in the first place to the German public, could have any binding results in the field of international law.

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Actual and legal aspects of War crimes and Crimes against Humanity attributed to H. von Ribbentrop.

Whereas upto now I have spoken about the actions, that led to the outbreak of the war and its spreading, I shall now proceed to the second large complex of the indictment, which deals with crimes committed during the war.

The Charter, in Article 6b, declares violations of the laws or customs of war to be punishable. This conception is illustrated by enumeration of a number of examples such as deportation, shooting of hostages etc. But these examples do not limit the conception. We are therefore obliged- in the same way as with Article 6a- to propose to the court a qualification, which it can use as a base for its decisions.

I agree in this conception with the procedure, proposed by the French prosecution. They declared, that they would be free to give a more explicit definition of punishable offences which had not been fully defined by the charter.

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What is good for the Prosecution is good for the Defence.

The use of the expression "Laws and Usages of war" (lois et coutumes de la guerre) as well as the enumeration of examples forces one to believe that the charter aims at violations of the classical "jus in bello". I therefore qualify war-crimes as offences against the law, established between belligerants by agreement or against prescriptive law, binding and recognized generally without special agreement. The several cases, which come under the collective conception of war crimes, must therefore be each examined as to whether they are to be regarded as such according to the traditional rules applying to armed conflicts between states. Where as, in general, classical international law holds responsible the state as a unit only, there always existed in the usage of war the exception, that also acting individuals were liable to be held responsible. Whether this responsibility of the individual person can be followed up in a punishing prosecution after the war has been the subject of many discussions. One will be able to ascertain that in the ruling practice of states, the belligerant who was violated by a war-crime may also after the war call to account the offender. If several states, which have fought shoulder to shoulder in the war, form a common court against the war-criminals of the conquered adversary, this court has the collective competency of all the states that form the court or have joined its charter.

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When speaking of the liability to be punished , of individuals, for crimes committed during the war against the adversary, who thereafter sits in judgement upon him, one would be thinking in the first place of former members of the combatting forces. Already at Versailles there were difficulties in answering the question to which degree military chiefs were to be made responsible. The idea to have a Minister of a cabinet (Ressortminister) held responsible under criminal law, so far never has appeared. Also in Versailles the war-criminals-committee was occupied with the question of making responsible non-military personalities from only political points of view. This committee discriminated clearly between war-criminals, which were to be judged by the allied court, and the guilt with regard to the outbreak of war, for the examination and judging of which a special political international court was to be created.

By means of the traditional conception a Minister (Ressortminister) cannot therefore be held responsible for violations of the "jus in bello". The prosecution can reach this success only by going the round about way via a conspiracy. If we follow the interpretation, given to this conception, the Foreign Minister of the Reich would e.g. have to be responsible for the destruction of the village of Ouradur. He would have to stand up for actions, which have not in the least to do with the Reich's foreign policy and are only single actions of some odd offices.

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As the hearing of evidence has shown, the Reich Foreign Minister was not only not competent for the conduct of war, but had in fact not the slightest possibility of influencing military measures either in a curbing or furthering way.

If one should want to regard the various Ministers (Fachminister) as a community of conspirators also with regard to war crimes, it would have to be proved, that the military, competent to conduct the war, acted in agreement with the ministers or at least after having given them the necessary information.

The compilation of military command offices and ministers to a union of will, directed towards the execution of actions criminal and abominated by all decent people, is an artificial subsequent construction of the prosecution. The unity, which did not exist at the time at which it is supposed to have worked, has but now been drawn up as a conception. It is self-evident, that a criminal procedure cannot be built up on such a method.

Herr von Ribbentrop can therefore not be punished without consideration for all war-crimes committed during the war on the German side. Such a responsibility for the results would be outright grotesque. He could on the contrary only be responsible for individual actions, if he himself participated in certain concrete individual actions.

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H. v. Ribbentrop is accused by the prosecution that, according to testimony by General Lahousen, he issued "directives" to Admiral Canaris to have Ukranian villages set afire, and to beat the Jews living there to death. First I wish to establish the fact that even a Foreign Minister cannot issue directives of any sort to a military agency. Furthermore, it would have been wholly nonsensical to issue such directives for setting afire Ukranian villages. Ukranians supported the German fight against the Poles. Thus, hardly anyone will believe, that H. v. Ribbentrop at that time advised on the destruction of an own ally. My client further insists that not one word was mentioned about the beating to death of Jews in that particular conference, especially so, as in connection herewith no reason for it existed.

I beg the Tribunal to base their decision on charges of war crimes and crimes against humanity raised on H v. Ribbentrop, on the general attitude of the accused with respect to questions of humanity. As was proven beyond doubt by the evidence H. v. Ribbentrop saved the lives of 10.000 allied prisoners of war through vigorous, personal intervention. As I will further show- within the framework of the conspiracy - he was instrumental in the unshackling of British prisoners of war and he used his influence for the preservation of the rules of the Geneva Convention. He was opposed to branding Russian prisoners of war.

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These are examples, whereupon the Tribunal may base their decision with respect to questions of humanity.

In problems where he was not actively involved, this may appropriately gauge the remaining attitude of the accused, as concerns questions of humanity. Further his attitude in the question of treatment of terror-aviators is charged as a war crime to H. v. Ribbentrop.

My client as well as the defendant Goering deny, that the conference at Schloss Klessheim, mentioned in document 735-PS, ever took place. I should like to emphasize that General Warlimont, who made those notes did not personally participate in the conference. Furthermore, the expression of opinion, attributed according to the document to H. v. Ribbentrop stands in contradiction to his usual demeanor in this question. Under Secretary Steengracht deposed that H. v. Ribbentrop, after the publication of the notorious article about lynch justice in the Reich, at once vigorously protested against it.

Further evidence concerning the problem of terror-aviators through examination of the witnesses General Jodl and Fieldmarshal Keitel proves that, not only the Foreign Office but H.v. Ribbentrop personally had pledged themselves in principle for the preservation of the Geneva Convention

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and that H.v. Ribbentrop and other laeding personalities took pains to assure the retention of, at least the basic human principles even in Hitler's most radical period. In spite of all that happened, it must be pronounced as a success, that in consequence of these steps the Geneva Convention was not abrogated. Hereby it must never be overlooked that especially in cases of terror fliers, where so-called terror-attacks in the form of air bombardments were involved, which were characterised by an indiscriminate attack upon cities without attacking military and armament objectives, such attacks then undeniably constituted a war crime in themselves. It must be taken into account in the reaction throughout Germany towards the conduct of air warfare of the westem powers, that according to established and traditional conceptions of an armed conflict between nations, the attack on the civilian population is prohibited. This thought is not only expressed in the Hague Convention on land warfare but constitutes a stipulation by contract of generally International Law, binding for all which is valid not only in the theater of operations on land. Acknowledging this, the Hague rules of air warfare, although permitting air attacks of military objectives in undefended cities, do not permit the bombing of dwellings of the civilian population. Although the Hague rules were not ratified, they were in practise followed by all belligerents, and acknowledged as common law.

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These measures became especially acute after complete air superiority had been achieved by the Allies and the resulting constant low level attacks with weapons on board on the civilian population took place. These particular events led for the first time to the discussion, whether in the face of a warfare which was undeniably violating International Law, it was still of any use to uphold the Geneva Convention in its substance. These considerations and corresponding reflections led to the drafting of documents which have become the object of evidence in the proceedings and which constituted - as was shown by the evidence - drafts but not decisions in this question. They can therefore not form the basis of a judgment, as certainly a state is entitled to having appropriate agencies express their opinion on this question.

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Opinions on the conception of conspiracy in relation to the position of Herr v.Ribbentrop as a minister.

With the permission of the tribunal I presented the role of Herr v.Ribbentrop before the war, at its outbreak and for its duration.

Beyond this the prosecution holds all defendants responsible for every crime presented here. The notion "conspiracy"is being used for motivating this common liability.

If the consequences were drawn from this extravagant accusation then each defense counsel would have to deal with all details presented by the prosecution. The obvious impossibility to use up so much time of the tribunal shows how questionable the basis of the accusation is.

Therefore I have to confine myself to examining the participation in the conspiracy from the view point of the actual and legal position of the foreign minister in the Third Reich.

Conspiracy in the sense of the charter and of the indictment means a sort or form of participation in a punishable act.

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This kind of offence was until now unknown to German and continental legal thinking. It existed only in the anglosaxon law. In this legal sphere conspiracy means participation in a punishable act which requires, as a minimum symptom an agreement (Einigung) to commit a crime.

A further pre-requisite is that the mutual plan causes the perpetration of a definite punishable offence.

The charter proceeds from this form of participation in a crime, in declaring punishable all offences stated in Para.6, assuming the existence of a conspiracy or a common plan, as a special form of participation in these crimes. The charter then stipulates in Para.6a another special form of conspiracy declaring punishable the participation in a common plan or conspiracy to carry out offensive wars or wars violating international treaties.

Under the conception "mutual plan" Charter and Indictment obviously understand something that reaches beyond the sphere of conspiracy. Mr. Justice Jackson himself admitted that the application of the conspiracy as an offence

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according to anglosaxon law, was exceeded and a conception created which is not yet juridically determinable.

Both forms of conspiracy constitute a liability for a l l acts committed by a n y o n e person carrying out both these forms of conspiracy.

The indictment uses piracy as a pattern in order to make the participants in this alleged conspiracy appear as a whole. The conspirators are all on board of a pirate ship which contrary to law and justice of all nations, engages in robbery and therefore is outlawed. Anyone who punishes the crew helps to restore justice.

At the first glance this picture appears to be attractive. However, on closer inspection, it beomes obvious that it is only a matter of a catchword which tries to apply the community of the ship's crew, united with the ship for better or worse to the place of the , by no

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comparison more complicated conditions of a modern state organization. The ships of all nations are according to established, commonly recognized and uncontested conception authorized to combat piracy on the high seas upon encountering a pirate. The criminal jurisdiction of almost all nations knows explicit regulations for combatting them. The peculiarity of this offence in distinction from o t h e r acts punishable in every country whether committed against own or foreign nationals - for example white slavery traffic acts of forging coin and so forth - is the circumstance that the jurisdiction is carried out on the high seas. Thereby the mistaken idea may arise that a crime in the sphere of international law is concerned. This, however is not the case. Piracy is a common offence, the prosecution of which is by international law permitted not only in coastal waters but also on the high seas belonging to all nations. The basis for this conception was laid in the United States already in the beginning of the last cdntury by decisions rendered by Chief Justice Marshal .

The acts with which Herr von Ribbentrop is charged were committed at a time during which the German Reich and its opponents confronted one another first in peace and then in war, on the stage of international relations. An example taken from the sphere of international common penal law is not suited to convey a plastic conception of a conspiracy of an entire state apparatus. Besides the arrow hits the archer himself. In the first place, the idea of the state, which according to the conception of the traditional international law is the

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only carrier of rights and duties, is being destroyed so that the persons standing behind it and acting on its behalf may separately be made liable to criminal prosecution. As usally only few persons acted directly as participants in the acts charged, the multitude of these people is then again compressed into an artificial whole, in order to hold them responsible also for those acts which were not committed by them.

Here the criticism of the jurist has to set in. According to our perception of law and also to the perception of law of all civilized nations, the criminal responsibility is tied only to a few basic rules showing but few divergences. According to continental law only such person can be held responsible for a punishable act who deliberately or negligently contributes to a definite act. By unanimous conception the perpetrator therefore is supposed to know the plan to which he allegedly contributed; to foresee and approve of the acts committed in executing it.

The particip tion in the form of conspiracy was until now known as an offence only to a limited legal circle. Therefore it is familiar only in a part of the legal systems of those nations who carry on or have joined in the present proceedings. It was completely unknown to the German Idea of law and therefore to Herr von Ribbentrop at the time of his political activity.

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Conspiracy as a form of complicity marks a much wider range of actions as criminal than Herr von Ribbentrop could have anticipated at the time of his activities in the field of foreign policy,

But even if this form of complicity is assumed as a base for legal findings according to the charter, neither the official position as Reich Foreign Minister, held by Herr von Ribbentrop nor the individual acts committed by him in this capacity made him liable of becoming a member of a conspiracy.

The case von Ribbentrop shows in particular, how, through the introduction of the concept of a conspiracy, responsibilities are getting interlocked, which have nothing whatever to do with each other, if we take into account the official position and authority as well as the personal attitude of the individual conspirators.

The prosecution, however, compresses, in order to achieve their aim, into an unity artificially and subsequently created a number of actions and individuals, chosen at random, which do not form any natural unity and of which most of them had nothing to do with each other at all. If we followed the charter and the indictment, there would appear as a result the fact - wholly alien to any actual and legal thought - that Herr von Ribbentrop, while

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personally and actually, as thoroughly proven by evidence, completely eliminated from any influence on the occupied Eastern territories, would have to bear the responsibility for war crimes and crimes against humanity committed there, whereas, for instance, the defendant Streicher although he headed his special department, would be answerable for the foreign policy.

If one confirms the existence of a conspiracy to committ war crimes and crimes against humanity would practically result in making Herr von Ribbentrop and the Foreign Office responsible for such crimes, whereas evidence has shown that this very office has always tried to observe the rules of warfare, according to international law, and to adhere to the Geneva convention even if this involved a severe struggle with Hitler.

The conspiracy to committ war crimes and crimes against humanity can only refer to <u>actual</u> offences against rules of war, either individual actions, as e.g. the execution of escaped British Air Force officers, or certain measures incompatible with the adopted rules of war. At any rate, the unity of conspirators ought to refer to a specific action or specific groups of actions <u>of</u> the <u>same nature.</u> It is impossible to hold a defendant responsible for actions not approved by him, or which he tried to prevent.

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I think that prosecution will agree, that there simply cannot, exist any conspiracy to commit crimes against the usages and customs of war. This concept is so controversial and is so undetermined in practice of the states and in the theory of international law, that individual acts, which, in the course of a war, may be considered as war crimes, could not form a part of the plans of the conspirators. It must also be considered that the development of means and methods of war modifies also the contents of the conc pt of war crimes. Therefore, there cannot be but a conspiracy to commit specific or war crimes or war crimes of the same kind. Therefore, any one of the so-called conspirators cannot be held responsible for <u>each and every</u> action which an objective judgment must define afterwards as a war crime Particularly, it would not meet the purpose of the guilty, if the defendant would be punished, according to the general and artificial concept of conspiracy exclusively, even for such war crimes which they tried to prevent with all their efforts.

This point of view applies particularly to Herr v. Ribbentrop. Not only did the military conduct of war not belong to his sphere, but he was, as was proven by

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evidence, expressly excluded from it by a repeated order of Hitler. His department had only insofar to do with war crime as they led to negotiations with foreign powers. Moreover, the fact, for instance, that after the terrible air bombardment of Dresden, the execution of 10 000 allied prisoners of war, was prevented on H.v.Ribbentrop's initiative with Hitler, proves that he has done, when informed of imminent war crimes, what to do was in his power and within his influence. These arguments and the result of evidence show how unjust it would be to share the point of view held by the prosecution, e.g. to hold a Foreign Minister with reduced authority responsible for crimes against usages of war and humanity, the more so, as it has been conclusively proven that he was excluded from any influence on the conduct of war.

With the court's permission, I shall now deal with the alleged conspiracy for planning and preparation of aggressi wars and of violation of treaties. Within the frame of such a conspiracy, the defendant is apparently to be held respon sible in his capacity as Minister for Foreign Affairs and the office formerly held by him in the diplomatic servi

This kind of conspiracy appears to deal with any act or plan which have any connection with war, its preparation, outbreak and course.

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Any individual act within this enormous complex of concepts is irrelevant in itself from the point of view of criminal law, and has had, until now, never been conceived as a crime called " outbreak of war". This kind of conspiracy does not contain any facts which come under the crimes, so far known by any system of criminal law in the world.

Therefore, I cannot but investigate this complex from the point of view of v. Ribbentrop's ministerial position and his relation to the German Reich which waged the various wars.

H.v.Ribbentrop, since the 4th of February 1938, held the position of a Minister of Foreign affairs of the German Reich . As shown by evidence, H.v. Ribbentrop was called to this office at a time when the actual leadership of foreign policy had already passed to Hitler in his double capacity of Reich Chancellor and head of the state. I have submitted as a document Hitler's speech of July 19th 1940, held at the Kroll opera house, where he emphasized that H.v. Ribbentrop had had to handle for years foreign policy according to Hitler's political directives. H.v. Ribbentrop, therefore, did not possess the position of a minister, as customary in modern constitutions. As shown in above-mentioned speech, he did not possess it either in fact or in law. This is shown by an examination of the public law of the 3rd Reich.

According to constitutional law, as it has developed in modern states in the course of the 19th and in the beginning of the 20th century, the department of the Minister for Foreign Affairs belongs to the executive functions.

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The Minister for Foreign Affairs has to share the responsibility of conducting foreign policy with the Prime Minister. This involves in a parliamentary democracy, responsibility to the representatives of the people; in a monarchical or presidential constitution to theehead of the state. This responsibility is actually of political importance only , and infers the resigning of a minister from his office when he does not enjoy any longer the confidence of parliament or of the head of the state. Most constitution make provisions for indicting a minister by the representatives of the people in case of violation of official duties. But even when convicted by a constitutional court in a kind of criminal procedure, the minister is not punished, but his actions are merely declared to have been illicit.

Both possibilities to call ministers to account were provided by the German constitution of the Weimar republic. By the way, the possibility of indicting a minister has never been made use of.

Constitutional law of the 3rd Reich utterly changed this state of things. A short time after Hitler had come to power, parliament was asked, with reference to existing internal difficulties to give its consent of an "Enabling Act" (Ermaechtigungsgesetz). The German people and its representatives expected at the time that this authorization was to be used temporarily, and merely for the removal of actual distress.

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This law became, however, the foundation of a complete transformation of the constitution.

The possibility of being responsible to a parliament did no longer exist. It changed into the responsibility towards the Fuehrer and Reich-Chancellor, in whose person the authority given up by parliament, now rested. Now there remained but one responsibility : that towards the head of the state. Starting from this parliamentary authorization all functions, derived from the power of the state, concentrated more and more in Hitler personally. The traditional division of power, the result of a more then century old struggle for constitutional rights became an empty shell by joining together all means of power and thereby obsolete. The power was concentrated in the hand of the Fuehrer, who had it applied by his plenipotentiaries separately. The theory of the state-law of the 3rd Reich designated this as change from the actual to the functional division of power.

The single Minister after this change had taken place did not act any longer under his own responsibility but only by the order (Auftrag) he had received from the head of the state. What applied to the individual, also applied to the former Reich-Cabinet. It had no influence any longer on state-leadership but was a common conception for various branches of administration technically separated. As the political tasks no longer existed with which normally the Ministers as a group had to deal with - and so to the cabinet - the tasks of the council of the Ministers were done automatically by the weight of the facts. Therefore, as the hearing of witnesses has shown, it never met during von Ribbentrop's period of office.

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Even the title "Minister" did not signify any longer the head of a department of administration (Reichsressort) but became a mere title expressing a rank.

Therresult of this reform was that the Minister for Foreign Affairs also did not have any longer the right to set down the directives of foreign policy. The hearing of evidence has shown this fact also in the form of speeches and utterances of Hitler, in which he, e.g. after the Rhineland occupation and the "Anschluss" of Austria said, that he brought about these, as he called them "great decisions" against the will of his advisers by his own decision and referring to his responsibility towards the German people and history. Seen from the state-law point of view this means that no minister had the possibility of preventing the decisions. Also from the state-law point of view he was not authorized to examine the legality of the Fuehrer's decisions. Because from the just-described concentration of all functions of state power in Hitler's person followed that he was authorized to carry out legislative and executive functions. A special form of the act of legislation was no longer provided for in the 3rd Reich. Also there was no measure by which from the contents of the Fuehrer's decisionsone could draw conclusions, whether he acted in his capacity as law-giver or as head of the executive. The conception of material law, laid down in Germany as in all continental states till the assumption of the power (Machtuebernahme), completely lost its meaning; also individual directives were given in the form of laws.

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In all constitutions the authorities who's task it is to apply laws are forbidden to examine the contents of these laws. This is even valid for jurisdiction, how much more for agencies of administration. The application of a law that was made in the correct way, provided for by the constitution must not be refused by any office in the state. The action of examining even by the law courts is limited to the question whether the way laid down by the constitution has been followed. This isalso the case in Great Britain and the United States, wherein decrees issued by the executive may be subject to examining with regard to their contents but not laws passed by parliament.

In the state law of the 3rd Reich there was only one authority for all expressions of will of the state: the Fuehrer. It often could not be found out on account of the dissolution of the conceptions of state law in which capacity he acted. The doctrine of state law of the 3rd Reich, therefore was debased to a theology of revelations of the Fuehrer. The old discriminations ceased to exist in the thinking of the Ministers. The only question that could arise in state law of the 3rd Reich was, whether the will of the Fuehrer was expressed in a clear enough way as to contain the will of the state.

This practice of constitutional law was unmistakeably the result of having transferred the pseudo-military way of thinking to the sphere of politics. The conceptions obedience and discipline were transferred onto a department in which they did not belong.

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In connection with the statements on the elimination of the traditional division of power we must point to a fact, which is just as characteristic for this despotia sui generis (Latin in the original Transl.), as it speaks against the existence of a conspiracy or a common plan.

The hearing of evidence shows no kind of council-giving or controling agency to the head of the state. Neither the cabinet nor the Reich-defense-council nor any other advisory committee had any influence on Hitler's decisions.

The key documents and the statements of witnesses only show monologues of Hitler before an increasing audience. All, that has the appearance of a council, is in reality reception of orders. The hearing of evidence has shown it to be certain, that efforts to influence Hitler could at the most lead to reactions not to be precalculated.

Herr von Ribbentrop and several of the other defendants, without doubt, had considerable power in their own sphere which did not interest Hitler. They were, however, completely denied to participate in the great decisions on war or peace, armistice, peace offers etc.

In the position of Foreign Minister, as held by Herr von Ribbentrop, an independant personality could not be tolerated. Herr von Ribbentrop was aware of this as Under Secretary of State v. Steengracht has testified here. He stated: Hitler could have use for an Under Secretary for foreign affairs but not for a Minister of foreign politics.

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This development of practice of constitution and government can hardly be reconciled with the thought of a common plan and conspiracy. The conspiracy demands, as we have seen, a combination and agreement in aims at which the participants form their will freely. The political practice of the 3rd Reich only knew the acclamation.

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V.

Remarks on the legal significance of political actions.

So far, my examinations have been based on the norms of actual criminal law as laid down in par. 6. I should not like to close my statement without drawing the Court's attention to the relation between politics and law.

The essential contents of politics is and remains, in the life of sovereign states, the defence of the interests of one's own people. In order not to let this interpretation of politics become debased to unscrupulousness, international life has established the concept of the settlement of interests, and diplomacy as representative of this principle. It has been diplomacy which has had an essential influence in establishing the principles of international relations and, therefore, of international law. The imperfection of international legal order is caused by the co-existence of many countries, which were acting on a base of equality. Its Achillean heel was the lack of any superior authority which could have been in a position to ensure the existance of legal order in the same way as the authority of a state is able to do within its own borders. For all the time unrestrained display of forces has, therefore, played a far greater part in the international sphere. Statesmen are committed to take care of their people's interests. If they fail in their politics, then the countries

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they were acting for, have to bear the consequences, and they themselves are judged by the judgement of history. But in a legal sense they were responsible only to their proper country for acts which their country was charged with, acts looked upon as infringing international law. The foreign country injured by the action in question could not hold responsible the acting individual. The partition erected by international law, respectful of national sovereignty, between the acting individual and foreign powers, was only removed in the case of war crimes, whereof I have spoken.

At any rate, such was at the beginning of world war II, the conception of international law, and it was not affected by any opposing attempts.

The chief French prosecutor gave as a reason for the indictment of leading men of the late regime the fact that a German government, which might be able to take jurisdiction in these cases, was lacking.

I have the fullest esteem for this most elegant argumentation, but it cannot remain hidden to a critical observer that such a sharp logic has led to a false conclusion. Any organized resistance headed by a national government

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came to an end when the German Wehrmacht was utterly defeated and the whole of the German territory occupied by the Allies.

The 4 principal victorious powers, which form this tribunal, acquired, together with actual authority a legal title recognized by international law concerning any decision as to the fate of the German national territory. They could have divided up Germany. But they chose another way. In the Berlin declaration of June 5, 1945, they assumed "supreme authority within Germany, including all the powers possessed by the German government, the High Command and any state, municipal or local government or authority." But this was all. The declaration expressly emphasized that the transfer of the said authority did not effect the annexation of Germany. *)

The exercise of the claimed powers was transferred to the Control Commission, composed of the commanders-in-chief of the four occupation zones.

Since the Berlin declaration Germany is in a transitory state still lasting at present. At the Potsdam conference held in July 1945 the four powers have come, among themselves, to further agreements,

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*) "The Governments of the United Kingdom, the United States of America and the Union of Soviet Socialist Republics, and the Provisional Government of the French Republic, hereby assume supreme authority with respect to Germany, including all the powers possessed by the German Government, the High Command and any state, municipal, or local government or authority. The assumption, for the purposes stated above, of the said authority and powers does not effect the annexation of Germany."

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made public by means of the statement of August 2, 1945. The Potsdam "Agreement for the establishing of a Council of Foreign Ministers" transfers to the said council the preparation of a peace settlement, which is to be ratified by a German government "when a government suitable for this purpose has been constituted". A second agreement provides regulations concerning Germany under allied control.

Those wordings make it clear that Germany is to remain a national state, that it is being placed under allied control and that the establishment of a German government is planned. This government is to accept, at a future date, peace conditions. This involves a government which is in a position to enter into commitments towards foreign powers as an internationally qualified partner.

The victors have accordingly chosen to exercise their power for decision given to them by conquest in such a manner as not to destroy the German state. During the transition period they themselves exercise the functions of the - temporarily non-existing - German government. We are therefore entitled to take the Potsdam Declaration as a foothold for the legal interpretation of Germany's position.

The German state, accordingly, has not been annihilated.

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Germany is burdened with obligations, which arose from her past. This is possible only, when the state upon whose attitude the obligation is based on and the one who must answer for it are countenanced as one and the same legal body.

Though the German State, at the moment, is not in position to act according to International Law through its own organs, it has not vanished from the sphere of the international legal order.

The finaldeductions of Mr. de Menthon cannot be accepted in view of the fact that his suppositions are wrong. Therefore, the jurisdiction of the victorious powers over German Nationals with regard to acts connected with National Socialistic policy cannot be based on current International Law. Thus, the Charter deviates from the international legal order. Furthermore it contradicts fundamental principles of criminal law.

If the French prosecutor is of the opinion that the Tribunal exercises the authority of the German state to punish, a state which according to the opinion of Mr. de Menthon does not exist at this time, then he must logically apply the sentence "nullum crimen sine lege" to the criminal law existing in Germany. An act could therefore be made punishable only, if at the time of its commitment it was punishable according to the German law. This does not apply to personal criminal responsibility for the violation of international treaties and assurances, as well as for the participation in the conspiracy and the common plan.

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In recognition of this, the Control Council for Germany in its proclamation No. 3 has reinstituted in the system of German criminal law, two international principles, wherefrom the Hitler Regime had deviated: namely prohibiting retroaction and analogy.

The political criminal concepts of the Charter create new legal principles which have to be considered as the germ of a code of world law. Herr v. Ribbentrop, at the time these incriminating events took place, lacked the perception of such a code of world law. One can dispense with the principle, that a crime can be punished only if its elements are stated in advance only in the very few cases, in which the cruelty of the act is so evident that its deserved punishment is beyond doubt. This could hold true for crimes which, in consequence of certain measures of the anormal amorality of the Hitler Regime, were during the last years not punished in Germany.

I have heretofore presented the evidence from the point of view of the valid International Law and the charter which you Mr. President, in the session of 20 June 1946 have again stressed as the basis for legal findings in these proceedings. Up to now, the code of international law has been unable to solve the problems which are to be decided here. On the basis of these shortcomings, the second world war broke out. The repercussions of this catastrophy - which could not be prevented by this legal order - cannot be fully evaluated today.

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To prevent their recurrences in the future, this is the high aim of humanity as expressed in the treaty of London of 8 August 1945 . That the objectives of this treaty could not be reached, is shown with alarming certainty by the fact, that on the very day on which the charter of this Court was proclaimed as a new law of the world, the war between the Soviet-Union and Japan broke out. Its possibility had been predicted to the allies of the Soviet-Union, 6 months prior to that. To justify it, it was pointed out that Russia had to settle an old account with Japan. In other words, this typifies a case of an unprovoked attack.

I have illustrated, that the attack and the attacker cannot be defined by a general definition inside the sphere of the phenomena of reality. The attacker can only be branded by a World authority. This supreme organ of humanity must possess not only an actual but also a moral authority. Universal trust must be put in its impartial judgment. It must be an Areopagus which stands above the conflicting parties and before which these parties can only appear, searching for justice, but not to participate in it as judges.

We are in a period of transition from an old law, under whose rule the ruins around us were created, to a new code of world law, which takes shape, but is as yet not morally and effectively consolidated.

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To judge and punish the acts which were committed by the former Foreign Minister Herr von Ribbentrop, his share in the happenings, the limits of his capability, and his own personal guilt is a difficult task, taxing human endurance almost beyond strength, in this period of transgressions and development.